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No. 99-409

IN THE
Supreme Court of the United States

HARTFORD UNDERWRITERS INSURANCE COMPANY,
Petitioner,

v.

UNION PLANTERS NATIONAL BANK, successor in interest by merger to MAGNA BANK, N.A.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does Section 506(c) of the Bankruptcy Code (11 U.S.C. § 506(c)) create a remedy in favor of certain, unpaid administrative claimants that entitles such claimants to recover their unpaid administrative expenses from the collateral of a secured creditor?

STATEMENT PURSUANT TO RULE 29.6

Respondent Union Planters National Bank is the successor in interest due to merger, effective as of October 9, 1998, to Magna Bank, N.A. Union Planters National Bank is a wholly-owned subsidiary of Union Planters Corporation, a publicly-traded corporation. No publicly held company owns 10% or more of Union Planters Corporation's stock.

Although the briefs filed with the court below and the decision below * refer to Respondent as "Magna," Respondent is referred to herein as "Union Planters" or "Respondent."

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* *See In re Hen House Interstate, Inc.*, 177 F.3d 719, 720, n. 2 (8th Cir. 1999) (en banc).

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STATUTES OR OTHER PROVISIONS INVOLVED

Respondent submits that the only statute or provision that is presently at issue in this case is 11 U.S.C. § 506(c) (authorizing a bankruptcy trustee to "surcharge" a secured creditor's collateral for certain necessary and beneficial expenses).

STATEMENT OF THE CASE

For its statement of the case, Respondent hereby adopts and incorporates herein by reference the description of the case set forth in "Section I" of the decision below. *See In re Hen House Interstate, Inc.*, 177 F.3d 719, 720-721 (8th Cir. 1999) (*en banc*).

REASONS FOR DENYING PETITION

I. UNION PLANTERS RESPECTFULLY SUBMITS THAT THE DECISION BELOW REFLECTS A GROWING CONSENSUS THAT OLDER CASE LAW ALLOWING THIRD PARTY CLAIMANTS TO PURSUE RECOVERIES UNDER 11 U.S.C. § 506(c) IS INCONSISTENT WITH THE PLAIN MEANING RULE AND OTHERWISE WRONGLY DECIDED

As Hartford correctly observes, at the present time, there is no uniformity among all of the Circuits on the question of whether third parties such as Hartford may "surcharge" a secured creditor's collateral under the provisions of 11 U.S.C. § 506(c). Respondent suggests, however, that there is a growing consensus as reflected in the two most recent Circuit Court decisions, other lower federal court decisions, and the collective writings of several bankruptcy scholars and commentators that the older line of cases allowing third parties to pursue such recoveries is patently at odds with the "plain meaning" rule and otherwise wrongly decided. The decision below—wherein the Eighth Circuit Court of Appeals, sitting *en banc*, expressly overturned prior Circuit precedent allowing third parties to seek relief under Section 506(c)—represents a substantial and decisive step toward the complete demise of the older line of cases and an ultimate universal recognition that Section 506(c) should and must be construed in accordance with its plain and unambiguous terms. Given the evolving state of Circuit Court jurisprudence on this issue, Union Planters respectfully submits that the granting of certiorari in this case is neither necessary nor appropriate.

Under its express terms, Bankruptcy Code Section 506(c) provides that "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." 11 U.S.C. § 506(c). As the court below correctly observed, "[t]he natural reading of § 506(c) entitles only the trustee to seek to surcharge property securing the claim of an allowed secured creditor under that section." *See In re Hen House Interstate, Inc.*, 177 F.3d 719, 722 (8th Cir. 1999) (*en banc*).

Notwithstanding the natural reading of this language, in *In re McKeesport Steel Castings Co.*, 799 F.2d 91 (3rd Cir. 1986), the Third Circuit Court of Appeals held that a third party claimant such as Hartford could surcharge a secured creditor's collateral under Section 506(c). In reaching this result, the Third Circuit did not "examine the plain language of the statute or the case law that requires adherence to its plain terms." J. Galton and F. McGovern, Jr., *Standing Under Section 506(c) of the Bankruptcy Code Reexamined*, 99 Com. L.J. 464, 467 (Winter 1994). Indeed, the *McKeesport* court focused on certain, perceived equitable and policy considerations and, on the basis of those considerations, concluded that third parties should be allowed to proceed under Section 506(c). *See McKeesport*, 799 F.2d at 93-4.

McKeesport was the first Circuit Court decision addressing the issue whether third party claimants may pursue recoveries under Section 506(e). Following the *McKeesport* decision, four other Circuits (originally including the Eighth Circuit) joined the Third Circuit in concluding that third parties should be allowed to seek relief under this Section. *See In re Parque Forestal*, 949 F.2d 504 (1st Cir. 1991); *New Orleans Public Service, Inc. v. First Federal Savings and Loan Associations of Warner Robins, Georgia (Matter of Delta Towers, Ltd.)*, 924 F.2d 74, 77-78 (5th Cir. 1991); *IRS v. Boatmen's First National Bank of Kansas City*, 5 F.3d 1157 (8th Cir. 1993); *In re Palomar Truck Corporation*, 951 F.2d 229 (9th Cir.

1992) *cert. denied sub nom. General Electric Capital Corporation v. North County Jeep & Renault, Inc.*, 506 U.S. 821, 113 S.Ct. 71 (1992). In adopting this position, the latter courts "essentially relied on *In re McKeesport* with little analysis except to note that denying standing to an administrative claimant would allow a secured creditor to reap a windfall, an inequitable result." *Ford Motor Credit Company v. Reynolds & Reynolds Company (In re JKJ Chevrolet, Inc.)*, 26 F.3d 481, 485 (4th Cir. 1994). As one commentator observed, the other Circuits following the Third Circuit's holding offered "no greater discussion or analysis than *McKeesport* in reaching the conclusion that an administrative claimant has standing under [Section 506(c)] to asset a surcharge motion. These courts do not address the purpose of [Section 506(c)], whether a broad construction of [Section 506(c)] would violate other goals of Title 11 or why the unambiguous language of the [Section 506(c)] should not be followed." P. Campsen, *Standing Under 11 U.S.C. § 506(c)*, 5 Norton Bankruptcy Law Advisor 5, 8 (May 1995).

As the *McKeesport* line of cases was developing, this Court rendered of a series of decisions in which it emphatically reiterated the importance of interpreting and applying the Bankruptcy Code in accordance with its plain meaning. *See, e.g., Patterson v. Shumate*, 504 U.S. 753, 761, 112 S.Ct. 2242, 2248 (1992); *Toibb v. Radloff*, 501 U.S. 157, 164, 111 S.Ct. 2197, 2201 (1991). Indeed, this Court repeatedly stressed that where the Bankruptcy Code is clear and unambiguous, "the sole function of the courts is to enforce it according to its terms." *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 1030 (1989); *Rake v. Wade*, 508 U.S. 464, 471, 113 S.Ct. 2187, 2191 (1993).

Acknowledging and adhering to the foregoing principles, the Fourth Circuit in *Ford Motor Credit Company v. Reynolds & Reynolds Company (In re JKJ Chevrolet, Inc.)*, 26 F.3d 481 (4th Cir. 1994) broke from *McKeesport* and its progeny and held that under its clear and unambiguous terms, Section 506(c) only authorizes a trustee (and, by operation of 11 U.S.C. § 1107, a Chapter 11 debtor-in-possession) to surcharge a secured creditor's collateral. Not only did the Fourth Circuit conclude that this holding was mandated by the plain meaning rule but also found that it was entirely "consistent with a fundamental purpose of the Bankruptcy Code—equitable distribution to similarly situated creditors." *JKJ Chevrolet*, 26 F.3d at 484. Specifically, the Fourth Circuit observed that the *McKeesport* line of cases essentially allows third party claimants such as Hartford to circumvent the Bankruptcy Code's carefully crafted priority scheme, "potentially causing an inequitable division of the [bankruptcy] estate." *Id.*, at 484. Moreover, the Fourth Circuit observed that the perceived equitable concerns underlying the *McKeesport* line of cases were ultimately based upon erroneous and mistaken assumptions. *Id.*, 484-486.

Although earlier bankruptcy and district court decisions had refused to follow the *McKeesport* line of cases on similar or identical grounds, Union Planters submits that the *JKJ Chevrolet* decision signaled a turning point in the prevailing views toward the permissibility of allowing third parties to seek relief under Section 506(c). Thus, following the *JKJ Chevrolet* decision, several courts in those Circuits where there is no controlling precedent to the contrary have held that only a bankruptcy trustee (or, by operation of 11 U.S.C. § 1107, a Chapter 11 debtor-in-possession) may seek relief under Section 506(c). *See, e.g., Matter of Blufftton Castings Corporation*, 224 B.R. 902, 903 (Bankr. N.D. Ind. 1998); *Ambassador Factors v. First American Bulk Carrier Corporation (Matter of*

Topgallant Lines, Inc.), 208 B.R. 584, 586 (Bankr. S.D. Ga. 1996). Similarly, a number of bankruptcy scholars and commentators writing after the *JKJ Chevrolet* decision consistently have rejected the *McKeesport* line of cases in favor of an approach more consistent with that of the Fourth Circuit. *See, e.g.*, L. Snider and K. Noble, *Standing to Surcharge the Secured Creditor: Policy, Plain Meaning, and Payment Under Section 506(c) of the Bankruptcy Code*, 5 J. Bankr. L. & Prac., 301, 308-9 (March/April 1996); G. Hesse, *One Statute, Three Disparate Interpretations: Standing to Pursue Recovery From A Secured Creditor Pursuant to Bankruptcy Code Section 506(c)*, 47 Baylor L. Rev. 39, 54-8 (Winter 1995); P. Campsen, *Standing Under 11 U.S.C. § 506(c)*, 5 Norton Bankruptcy Law Advisor 5, 8 (May 1995); J. Galton and F. McGovern, Jr., *Standing Under Section 506(c) of the Bankruptcy Code Reexamined*, 99 Com. L.J. 464, 472-475 (Winter 1994).

With the Eighth Circuit's *en banc* decision below (which is the only reported Circuit Court *en banc* decision on the subject), the shift in prevailing thinking sparked by the *JKJ Chevrolet* decision has now taken on a new force and dimension. Indeed, given the Eighth Circuit's express renunciation of its previous adoption of the *McKeesport* decision, Respondent submits that other Circuits that once adhered to *McKeesport* will be compelled to reconsider their previous holdings and will likewise conclude that these decisions were not soundly reasoned, but rather inescapably in conflict with the plain meaning rule. Thus, in no sense can the current "split" among the Circuits on the issue whether third party claimants may seek recovery under Section 506(c) be considered a static and intractable deadlock that will remain hopelessly unresolved unless this Court intervenes. On the contrary, the current state of jurisprudence on this issue is clearly an evolving one that should ultimately result in a consistent and uniform interpretation of Section 506(c) in accordance with its plain and unambiguous terms.

Given the foregoing, this Court's review of the decision below clearly would seem unwarranted. *See Layne & Bowler Corporation v. Western Well Works*, 261 U.S. 387, 393, 43 S.Ct. 422, 423-4 (1923) (emphasis added) (writ of certiorari should not be granted except in cases of significant public importance and "where there is *a real and embarrassing* conflict of opinion and authority between the Circuit Court of Appeals."). Indeed, beyond hastening the complete demise of the *McKeesport* line of cases, review of the decision below would not appear to provide this Court with a meaningful opportunity to advance the development of bankruptcy jurisprudence other than to, perhaps, remind lower courts (once again) that where the provisions of the Bankruptcy Code are plain and unambiguous, the role of the judiciary is to apply those provisions according to their terms. As more fully described above, the latter principle is one that several lower courts already have begun to recognize and apply to Section 506(c).

II. HARTFORD'S CONTENTION THAT THE DECISION BELOW VIOLATES ESTABLISHED PRINCIPLES OF STANDING IS BASED UPON A FUNDAMENTAL MISUNDERSTANDING REGARDING THE APPLICABILITY OF THESE PRINCIPLES TO THE CASE

Hartford further insists that a writ of certiorari must be granted in this case because the decision below violates established principles of "standing" as recognized and articulated by this Court. While it is true that many courts (including the court below) and commentators have conveniently used the term "standing" when describing the issue of whether third party claimants such as

Hartford may surcharge a secured creditor's collateral under Section 506(c), this loose characterization can be misleading. Indeed, the ultimate issue is not one of standing in the most traditional usage but rather whether Congress intended for Section 506(c) to provide third party claimants such as Hartford with a "cause of action" or remedy against a secured creditor and/or its collateral. Accordingly, it is evident that Hartford's attempt to invoke the doctrine of "prudential standing" to persuade this Court to review the decision below is ill-founded and mistaken.

As this Court has repeatedly recognized, there is a profound and fundamental distinction between the concepts of standing and whether a party has a cause of action or remedy under a particular federal statute. *See, e.g., Steel Company v. Citizens For A Better Environment*, 523 U.S. 83, 118 S.Ct. 1003, 1010 (1998) (courts must resolve questions of standing before considering whether plaintiff has a cause of action); *Davis v. Passman*, 442 U.S. 228, 239, n.18, 99 S.Ct. 2264, 2274, n.18 (1979) (distinguishing concepts of "jurisdiction," "standing," "cause of action," and "relief."). Specifically, standing in the most commonly used sense concerns whether "a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Sierra Club v. Morton*, 405 U.S. 727, 731, 92 S.Ct. 1361, 1364 (1972). Thus, the law of standing requires that a party bringing an action have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues." *Phillips Petroleum Company v. Shutts*, 472 U.S. 797, 804, 105 S.Ct. 2965, 2965, 2970 (1985).

In contrast, the question whether a party has a cause of action under a particular federal statute is one of statu-

tory construction in which the court must determine whether Congress intended to create a remedy in favor of such a party. As this Court stated in *Karaholios v. National Federation of Federal Employees, Local 1263*, 489 U.S. 527, 532, 109 S.Ct. 1282, 1286 (1989) (citations omitted), the question of whether a party has a private cause of action under a statute "poses an issue of statutory construction . . . . Unless such congressional intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential implication of a private remedy simply does not exist." Thus, "[t]he focus of cause of action inquiry must not be confused with standing—it does not go to the quality or extent of the plaintiff's injury, but to the nature of the right asserted." 13 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure: Jurisdiction 2d*, § 3531.6 at 500 (1984).

The more traditional and common questions of standing most often arise in connection with "challenges to government conduct, where the litigants often lack the obvious stake normally present in most lawsuits between private parties[.]" L. Tribe, *American Constitutional Law*, § 3-14 at 104 (2nd Ed. 1988). As one noted scholar observed, "[t]he law of standing is almost exclusively concerned with such public-law questions as determinations of constitutionality and review of administrative or other governmental action." C. Wright, *Law of Federal Courts*, § 13 at 68 (5th Ed. 1994). Thus, for instance, in *Bennett v. Spear*, 520 U.S. 154, 117 S.Ct. 1154 (1997)—a case cited and heavily relied upon by Hartford in its Petition—the Court considered whether a group of ranchers and irrigation districts had standing to chalienge certain actions taken by the U.S. Secretary of the Interior and certain members of the Federal Fish and Wildlife Service. Similarly, in *Association of Data Processing*

Service Organizations, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827 (1970)—another case that Hartford relies upon to attack the decision below—the Court addressed the issue of whether certain data processing companies had "standing" to challenge a ruling by the Comptroller of Currency.

In actions between private parties that—as in the present case—essentially involve a demand for monetary relief, the more traditional issue of standing rarely arises. Specifically, in such cases, there is normally no question that the plaintiff has sufficient a stake in the outcome of the action to insure that a justiable controversy is properly presented to the court. *See* 13 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure: Jurisdiction 2d*, § 3531.6 at 496 (1984).

In the present case, it is apparent that the decision below in no way implicates the traditional notions of standing upon which Hartford relies in its Petition. Indeed, it has never been suggested that Hartford did not sustain any type of injury as a result of its failure to receive all of the premiums owing by the Debtor. Nor has it ever been suggested that Hartford would not realize some degree of "remedial benefit" if it were permitted to surcharge Union Planter's collateral for these premiums. Instead, as the court below clearly recognized (that is, notwithstanding its convenient use of the term "standing"), the controlling issue in this case is whether Section 506(c) creates a remedy or cause of action in favor of third party claimants such as Hartford. In concluding that it does not, the court below reached a result that is in complete harmony with the prevailing precedents of this Court. *See, e.g., National Railroad Passenger Corporation v. National Association of Railroad Passengers*, 414 U.S. 453, 458, 94 S.Ct. 690, 693 (1974) ("when legislation

expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies. . . . This principle of statutory construction reflects an ancient maxim—expressio unius est exclusio alterius.").

III. THE COURT BELOW'S CONSTRUCTION AND APPLICATION OF 11 U.S.C. § 506(c) IN ACCORDANCE WITH ITS PLAIN AND UNAMBIGUOUS TERMS IS IN NO WAY INCONSISTENT WITH THIS COURT'S "HOLISTIC" APPROACH TO STATUTORY CONSTRUCTION

Hartford also insists that the decision below must be reviewed by this Court because it violates established principles of statutory construction. Specifically, Hartford contends that under this Court's "holistic" approach to statutory interpretation, it was impermissible for the court below not to construe the term "trustee" as used in Section 506(c) to include third parties such as itself.

While this Court clearly has recognized that statutory construction "is a holistic endeavor," *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 108 S.Ct. 626, 629 (1988), this does not mean that courts should look to the other provisions in a statute to create ambiguity where none exists. 2A N. Singer, *Sutherland Statutes and Statutory Construction*, § 46.04 at 98 (5th Ed. 1992) ("aids to interpretation can be used only to resolve ambiguity and never to create it."). Indeed, this Court never has suggested that when confronted with a statutory provision that is clear and unambiguous on its face, a court must comb through the other provisions of the statute to determine if there is any conceivable way in which the facially clear and unambiguous provision can be considered ambiguous. Quite the contrary, this Court has repeatedly

emphasized that "[t]he plain meaning of legislation should be conclusive . . . ." *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031 (1989). As was stated in *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-4, 112 S.Ct. 1146, 1149 (1992) (citations omitted):

> [C]anons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that the legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, the first canon is also the last: 'judicial inquiry is complete.'

Even putting the foregoing principles aside, it should be apparent that there is no validity to Hartford's contention that other provisions in the Bankruptcy Code require that Section 506(c)'s use of the term "trustee" be construed to include third parties such as itself. Thus, for instance, Hartford attempts to support the latter construction by pointing out that under Bankruptcy Section 503(a), certain kinds of expenses may be recovered from a bankruptcy estate as administrative priority expenses. From this fact, Hartford somehow deduces that "section 506(c) is nothing more than a priority provision." Petitioner's Petition, p. 15. Not only is this reasoning incomprehensible, but Hartford's ultimate conclusion—that Section 506(c) is a "disguised" priority provision—is completely implausible under any established canon of statutory construction.

Indeed, Congress has expressly addressed the subject of "priorities" in Section 507 of the Bankruptcy Code. Specifically, this Section sets forth a very carefully crafted

list of claims that are entitled to priority in a bankruptcy proceeding and defines the relative priority of those claims with respect to one another. *See* 11 U.S.C. § 507. Nowhere in Bankruptcy Code Section 507 is there any reference to Section 506(c) nor any suggestion that the claims of a secured creditor are subordinate to those of an administrative expense claimant such as Hartford. Thus, in essence, what Hartford is proposing is that notwithstanding the elaborate priority framework set forth in Bankruptcy Code Section 507, Congress decided: (1) to create a special priority provision for certain administrative claimants (who are not in any way explicitly referenced in the provision); and (2) to bury that provision in a section of the Bankruptcy Code that is expressly designed to address the nature and extent of secured claims. Clearly, there is no accepted canon of statutory construction pursuant to which it is permissible to assume that Congress engages in such "hocus pocus" when enacting legislation.

Similarly, Hartford points to the provisions of Bankruptcy Code Section 1109(b) to support its assertion that a "holistic" interpretation of the Bankruptcy Code requires that it be allowed to surcharge Union Planters' collateral under Section 506(c). Specifically, Section 1109(b) of the Bankruptcy Code provides that in a Chapter 11 bankruptcy proceeding, "a party in interest . . . may raise and appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). As courts and other authorities have consistently recognized, Section 1109(b) simply seeks to protect the procedural rights of creditors and other parties in interest to participate in a Chapter 11 proceeding. It is not designed, however, to make available to such parties substantive remedies that they are otherwise not entitled to pursue. *See, e.g., Matter of James Wilson Associates*, 965 F.2d 160, 168-9 (7th Cir. 1992) (all that Section 1109(b) "means is that anyone

who has a legally protected interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with respect to any issue to which it pertains, thus making explicit what is implicit in any *in rem* proceeding —that everyone with a claim to the *res* has the right to be heard before the *res* is disposed of since that disposition will extinguish all such claims.").

Moreover, as the court below correctly noted, Hartford's reliance on the provisions of Bankruptcy Section Code 1109(b) is misplaced on an even more fundamental level, for Section 1109(b) has no application outside the context of Chapter 11 bankruptcy proceeding. *In re Hen House Interstate, Inc.*, 177 F.3d 719, 722, n.3 (8th Cir. 1999) (*en banc*); *see also* 11 U.S.C. § 103(f) ("subchapters I, II and III of Chapter 11 of this title apply only in a case under such chapter."). The instant action, however, was not prosecuted or even initiated until after the Debtor's bankruptcy case had been converted to a Chapter 7 proceeding.

For attempted additional support for its contention that Section 506(c) must be construed to allow third parties such as itself to seek recovery against a secured creditor's collateral, Hartford argues that in contrast to Section 506(c), other provisions of the Bankruptcy Code use the term "only" when identifying certain parties. None of the provisions cited by Hartford, however, involve substantive remedies such as those set forth in Section 506(c). Instead, the provisions cited by Hartford address various procedural and administrative matters with respect to which the inclusion of the term "only" is dictated by the context and purpose of the provisions. *See, e.g.*, 11 U.S.C. § 109(d) (defining those parties who are eligible to be a debtor under certain Chapters of the Bankruptcy Code);

11 U.S.C. § 303(a) (identifying those parties against whom an involuntary bankruptcy petition may be filed); and 11 U.S.C. § 1121(b) (establishing the "exclusive" period during which the debtor is the only party entitled to file a Chapter 11 plan).

Moreover, it is evident throughout the Bankruptcy Code that when Congress wanted to make certain remedies and relief available to creditors and other third party claimants, it expressly did so. *See, e.g.*, 11 U.S.C. § 502(a) (expressly authorizing any party in interest to object to a proof of claim); 11 U.S.C. § 554(b) (expressly authorizing any party in interest to seek the abandonment of property from the bankruptcy estate); 11 U.S.C. § 727 (c)(1) (expressly authorizing any creditor to object to the granting of a discharge to a Chapter 7 debtor); 11 U.S.C. § 727(d) (expressly authorizing any creditor to seek the revocation of a discharge granted to a Chapter 7 debtor); 11 U.S.C. § 1104(a) (expressly authorizing any party in interest to seek the appointment of a Chapter 11 trustee); 11 U.S.C. § 1112(b) (expressly authorizing any party in interest to seek the dismissal or conversion of a Chapter 11 proceeding); U.S.C. § 1121(c) (expressly authorizing any party in interest to file a Chapter 11 plan after the expiration of the debtor's "exclusive period").

Indeed, if Hartford's reasoning were taken to its logical conclusion, each creditor in a bankruptcy proceeding would be entitled to pursue (for its own benefit) such remedies as those set forth in the Bankruptcy Code's "preference" and "fraudulent conveyance" provisions, for while the latter provisions identify the trustee as the party who is to bring such actions, they do not expressly provide that the trustee is the "only" party who may bring such actions. *See* 11 U.S.C. §§ 547, 548; *see also* 11 U.S.C. § 363 (which authorizes the trustee to use, sell or lease property of the bankruptcy estate but does not expressly

state that "only" the trustee may undertake such actions); 11 U.S.C. § 365(a) (which empowers the trustee to assume or reject executory contracts and unexpired leases but does not specify that "only" the trustee may exercise such powers); and 11 U.S.C. § 554(a) (which provides that the trustee may abandon property of the bankruptcy estate but does not expressly state that "only" the trustee may do so). Thus, following the construction advanced by Hartford could produce an absurd result that would defeat the very purpose of a bankruptcy proceeding.

In short, the decision of the court below that Section 506(c) must be construed and applied in accordance with its plain and unambiguous terms can in no way be regarded as incompatitble with a "holistic" construction of the Bankruptcy Code.

IV. THE *MEYER v. FLEMING* DECISION RELIED UPON BY HARTFORD HAS NO RELEVANCE OR APPLICABILITY TO THIS CASE

Finally, Hartford maintains that this Court's holding in *Meyer v. Fleming*, 327 U.S. 161, 66 S.Ct. 382 (1946) mandates that the decision below be reviewed and reversed by the Court. The *Meyer* decision, however, has no factual or legal relevance to the case at hand. Specifically, *Meyer* was a case decided under the former Bankruptcy Act—the predecessor to the modern Bankruptcy Code—in which the Court addressed the narrow issue whether a shareholder of a bankrupt railway company could continue to prosecute, on behalf of the company, an antitrust and shareholder's derivative action that the company's bankruptcy trustee had elected not to pursue. Thus, not only was *Meyer* decided under a different bankruptcy statute, but the case also did not involve any issues regarding the surcharging of a secured creditor's collateral or the right of an administrative claimant (or any other

parties) to pursue remedies established in favor of a bankruptcy trustee. In fact, the case did not even involve a secured creditor or an administrative expense claimant. Thus, it is no surprise that Hartford fails to cite to any decision—nor do there appear to be any decisions—in which a court has relied upon or cited to *Meyer* in support of the conclusion that administrative expense claimant may pursue recoveries under Section 506(c). How Hartford can conclude that the *Meyer* decision provides a basis for this Court to review and reverse the decision below—or that the decision even supports Hartford's construction of Section 506(c) is perplexing to Respondent.

CONCLUSION

For all the foregoing reasons, Respondent Union Planters National Bank respectfully submits that Petitioner Hartford Underwriters Insurance Company's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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